



COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

D.T.C. 03-50

September 28, 2016

Petitions of Verizon New England Inc. to Waive Certain Service Quality Results Measured Under the Performance Assurance Plan for April, May, and June 2016

ORDER ON WAIVER PETITIONS

I. INTRODUCTION

On June 15, July 15, and August 12, 2016, Verizon New England Inc., d/b/a Verizon Massachusetts (“Verizon”) requested that the Department of Telecommunications and Cable (“Department”) waive the bill credits that would otherwise be due to Competitive Local Exchange Carriers (“CLECs”) under provisions of Verizon’s Performance Assurance Plan (“PAP”) for the reporting periods of April, May, and June 2016, respectively.¹ Waiver Petitions at 1-2. The Petitions are unopposed. For the reasons discussed below, the Department grants Verizon’s requests.

II. BACKGROUND

In order to ensure that Verizon provides high-quality service to CLECs pursuant to § 271 of the Telecommunications Act of 1996, the Department and Verizon instituted the PAP, which includes: (1) the adoption of carrier-to-carrier service measurements and standards; (2) scoring

¹ See *Petition of Verizon New England Inc. to Waive Certain Service Quality Results Measured Under the Performance Assurance Plan for April 2016*, D.T.C. 03-50 (Jun. 15, 2016) (“April Waiver Petition”); *Petition of Verizon New England Inc. to Waive Bill Credits Under the Performance Assurance Plan for May 2016*, D.T.C. 03-50 (Jul. 15, 2016) (“May Waiver Petition”); *Petition of Verizon New England Inc. to Waive Bill Credits Under the Performance Assurance Plan for June 2016*, D.T.C. 03-50 (Aug. 12, 2016) (“June Waiver Petition”) (collectively “Waiver Petitions”).

mechanisms to determine whether CLECs are receiving non-discriminatory treatment; (3) a provision for the payment of bill credits to CLECs if Verizon's reported performance does not meet certain standards; (4) monthly reporting requirements; and (5) additional provisions. PAP at 1.

Because carrier-to-carrier service quality data may be influenced by factors beyond Verizon's control, Verizon may file exception or waiver petitions with the Department seeking to have the company's monthly service quality results modified. *Id.* at 38, Appendix C. The PAP provides three grounds for such exception or waiver petitions, including, as is requested here, situations beyond Verizon's control that negatively affect its ability to satisfy Benchmarks established in the PAP.² *Id.* at 39, Appendix C; Waiver Petitions at 1-2. The PAP specifically recognizes work stoppage as grounds for a Verizon waiver petition. PAP at 39, Appendix C (providing that Verizon's inability to meet PAP Benchmarks "during periods of emergency, catastrophe, natural disaster, severe storms, **work stoppage**, or other events beyond Verizon's control" may serve as a basis for an exception or waiver petition) (emphasis added). The Department has already granted at least one previous waiver request made by Verizon due to a work stoppage. *See Petition of Verizon New England Inc. to Waive Certain Service Results Measured Under the Performance Assurance Plan for August 2011*, D.T.C. 03-50, Order on Petition (Nov. 21, 2011).

The PAP sets forth a five-step analysis for waiver petitions:

Any petition . . . must demonstrate **clearly and convincingly** . . . [1] the extraordinary nature of the circumstances involved; [2] the impact that the circumstances had on Verizon's service quality; [3] why Verizon's normal, reasonable preparations for difficult situations proved inadequate; and [4] the specific days affected by the event. The petition must also include [5] an analysis of the extent to which the parity metrics (retail and wholesale) were affected by the subject event.

² The other two grounds for an exception or waiver petition involve "clustering" of data and the CLECs' own behavior, respectively. PAP at 39, Appendix C. Verizon does not assert either of these grounds as a basis for the relief sought in the Petitions.

Id. at 40, Appendix C (emphasis added). The Department has full discretion to consider all available evidence submitted, and may dismiss filings for failure to make a *prima facie* showing that the requested relief is justified. *Id.*

The PAP also establishes deadlines for Verizon's filing of a request for exception or waiver, response to any such petition by CLECs, and issuance of the Department decision, as detailed in Appendix F of the PAP. *Id.*; PAP at 69, Appendix F. The PAP does not specify how Verizon must notify affected CLECs of a waiver filing. In this circumstance, Verizon submitted to the Department two, separate e-mail address lists of the CLECs and individuals served electronic copies of the Waiver Petitions. Waiver Petition Cover Letters Dated June 14, July 14, and August 11, 2016. Verizon represented that it emailed a copy of each petition to the parties listed in the above-referenced docket, as well as to any CLECs for whom Verizon's records reflect a financial interest in the PAP results for that reporting period. *Id.* In an overabundance of caution to ensure that all affected CLECs were appropriately notified and had an opportunity to respond to Verizon's waiver requests, the Department issued a Procedural Notice on September 2, 2016, establishing a September 12, 2016, deadline for replies to be filed to Verizon's Waiver Petitions.³ Procedural Notice at 2. The Department did not receive any replies.

Verizon indicates that a 50-day work stoppage by a segment of its workforce impacted its ability to meet certain performance metrics under the PAP for the April, May, and June reporting periods. Waiver Petitions at 1. The work stoppage commenced on April 13, 2016, and lasted until June 1, 2016. *Id.* Verizon contends it was unable to satisfy Benchmark standards during

³ This date reflects the 10 days afforded to CLECs and interested parties under the PAP. PAP at 69, Appendix F; Procedural Notice at 2.

the specified reporting periods for the following ordering measures as a direct result of this work
stoppage:

April 2016

Metric #		Mode	Metric Description and Product
OR-1-04-3331	Critical Measure (“CM”) & Mode of Entry (“MOE”) ⁴	Loop	% On Time LSRC/ASRC - No Facil Chk (Electr. No Flow-through) - UNE-L/Pre-qual complx/LNP
OR-1-06-3331	CM & MOE	Loop	% On Time LSRC/ASRC - Facil Chk (Electr. No Flow-through) - UNE-L/Pre-qual Complx/LNP
OR-1-04-2320	CM	Resale	% On Time LSRC/ASRC - No Facil Chk (Electr. No Flow-through) - Resale POTS/Pre-qual Complx

April Waiver Petition at 7.

May 2016

Metric #		Mode	Metric Description and Product
OR-1-06-3211	CM	Specials	% On Time LSRC/ASRC - Facil Chk (Electr. No Flow-through) - UNE Specials DS1
OR-1-12-5020	MOE	Trunks	% On Time FOC - Interconnect Trunks

⁴ Under the terms of the PAP:

The Mode of Entry (“MOE”) section of the Plan [Appendix A] is designed to measure Verizon’s overall Section 271 performance in three individual MOE categories that correspond to the methods or modes CLECs use to obtain facilities from Verizon to support the service that they offer in the local exchange market: Loop-Based; Resale - POTS; and Interconnection Trunks. The MOE measurements provide a mechanism to measure the overall level of Verizon’s service to the entire CLEC industry in the three areas.

PAP at 9, Appendix A. In terms of Critical Measures, the PAP specifies:

Verizon’s performance on each of the measures included in [Appendix B] of the Plan is considered to be critical to the CLECs’ ability to compete in the Massachusetts local exchange market. Should Verizon performance miss an applicable performance standard for even one of these measures, the eligible CLECs will be entitled to bill credits. Each Critical Measure is assigned its own maximum penalty amount and has been given a weight relative to its importance to the marketplace.

PAP at 21, Appendix B.

May Waiver Petition at 7. Verizon also contends it was unable to satisfy Benchmark standards in **June 2016** for the ordering measure OR-1-12-5020. June Waiver Petition at 7. Although the work stoppage did not occur in June, Verizon indicates that missed metric was included in the June 2016 report, because the original order was placed during the work stoppage. *Id.* at n.10. Verizon specifies that orders must be accounted for in the month in which they are completed rather than the month in which they are received. *Id.*

In support of its Waiver Petitions, Verizon submitted the corresponding Monthly PAP Reports for which it seeks waiver of the missed metrics at issue. Waiver Petitions at Exhibit 1. Verizon also submitted a summary of its monthly aggregate performance on the metrics for which it is seeking waivers, each commencing April 2015 until the reporting period at issue. Waiver Petitions at Exhibit 2. According to Verizon's estimates, it seeks waivers of billing credits totaling \$139,462 that would be otherwise due to CLECs.⁵ Waiver Petitions at 2.

Under the PAP, CLECs and other interested parties may file replies to any Verizon petition for exception or waiver. PAP at 40, Appendix C; PAP at 69, Appendix F. However, no CLEC or interested parties submitted a reply.

III. ANALYSIS

The Department finds that Verizon has presented clear and convincing evidence addressing each of the five tests under the PAP, and therefore that Verizon has met its burden under the PAP to make a *prima facie* showing that the relief requested in the Waiver Petitions is justified. Since no commenters have challenged or rebutted Verizon's *prima facie* showing, the Department concludes that Verizon has met its burden under the PAP.

1. *The Extraordinary Nature of the Circumstances Involved.*

⁵ Specifically, \$77,839 in bill credits for April; \$29,190 in bill credits for May; and \$32,433 in bill credits for June. Waiver Petitions at 2.

Verizon asserts that, as a result of the work stoppage, it mobilized approximately 1,800 of its managers to perform work usually handled by approximately 4,400 unionized Massachusetts Verizon workers (“Associates”). Waiver Petitions at 4-5. Although Verizon trained the managers to perform these jobs in anticipation of a possible work stoppage, the managers “could not perform their jobs as quickly as the striking workers who ordinarily would perform these jobs” and “performed their duties under difficult conditions.” *Id.* at 5, 8.

Consequently, Verizon argues, and no other party disputes, that the actions of the Associates during the strike constituted a “work stoppage” sufficient to qualify under the PAP. *Id.* at 1-2. As a result, the Department finds that Verizon has sufficiently demonstrated that the lack of experienced manpower available to Verizon to perform the Associates’ jobs during the strike was of an extraordinary nature.

2. The Impact that the Circumstances Had on Verizon’s Service Quality.

Verizon asserts that each of the affected measures is typically handled manually by an Associate. *Id.* at 7. Verizon indicates that, despite its managers’ efforts, it “did not have enough manpower during the Work Stoppage to fully staff its centers to handle in its normal manner the volume of orders being received.” *Id.* Verizon also contends that the ordering function is a complex task which requires highly experienced workers, and that the managers substituting for the Associates faced a “steep learning curve,” resulting in longer order processing times. April Waiver Petition at 7; May Waiver Petition at 7.

The Department accepts Verizon’s unchallenged arguments that these specific wholesale ordering functions are complex tasks that need to be handled manually by experienced staff, and that the absence of the Associates had a negative impact on Verizon’s ability to meet the Benchmark requirements.

3. *Why Verizon's Normal, Reasonable Preparations for Difficult Situations Proved Inadequate.*

In addition to the efforts already described above, Verizon states that its preparations for the work stoppage included using its Emergency Work Assignment System to assign managers to the technical or customer support jobs that best suited them. Waiver Petitions at 4. Verizon asserts that it had planned for a potential work stoppage “for well over a year” before the actual event, and managers “participated in training for their respective assignments.” *Id.* Verizon specifies that, once the work stoppage began, managers were assigned to 12-hour shifts, seven days a week. *Id.* Verizon asserts that despite these preparations, it was unable satisfy the service quality standards for the measures in question. *Id.* at 8. The Department accepts Verizon’s demonstration that its preparations proved inadequate due to lack of manpower and the managers’ lack of experience in their assigned tasks. Despite Verizon’s efforts, this extraordinary event not only resulted in slower response times but also slower performance and caused Verizon to miss certain PAP metrics.

4. *The Specific Days Affected by the Event.*

Verizon states that the work stoppage commenced on April 13, 2016, and ended on June 1, 2016, when the Associates returned to work. *Id.* at 1. No one challenged this assertion. In addition, the dates are consistent with the Department’s independent understanding of the duration of the work stoppage. Consequently, the Department agrees with Verizon’s recitation of the days affected by the event.

5. *The Extent to which the Parity Metrics Were Affected by the Subject Event.*

According to Verizon, it did not miss *any* parity measures in April 2016; only missed two parity measures (MR-3-03-3112 and MR-5-01-3342) in May 2016; and missed four in June 2016 (MR-3-02-3342, MR-4-03-3342, MR-5-01-3112, and MR-5-01-3342). *Id.* at 9. Importantly, Verizon observes that its performance during the months of the work stoppage “are consistent

with its performance in prior, business-as-usual months.” May Waiver Petition at 9; June Waiver Petition at 8-9. Verizon notes that it missed three parity metrics in March 2016, which is the month before the work stoppage began. May and June Waiver Petitions at 9. As a result, the Department agrees with Verizon’s contention that its miss of parity metrics in May and June 2016 (and meeting the metrics in April 2016) cannot be attributed primarily to the work stoppage. Further, the fact that these were the only measures that Verizon missed out of the 92 parity measures indicates that Verizon did not unfairly discriminate against any CLECs during the work stoppage in May and June 2016. No CLEC or other party has challenged this conclusion.

IV. CONCLUSION

Based upon the foregoing analysis, the Department finds that Verizon has made a *prima facie* showing with clear and convincing evidence, which stands unrefuted, that the Department should waive the penalties for missing the PAP performance measurements for April, May, and June 2016. In addition, the Department finds that Verizon did not unfairly discriminate against any CLECs under the PAP during that time period as a result of the work stoppage.

V. ORDER

Consistent with the above, the Department hereby GRANTS Verizon’s Waiver Petitions for April, May, and June 2016.

BY ORDER OF THE DEPARTMENT,



Karen Charles Peterson
Commissioner

RIGHT OF APPEAL

Pursuant to G.L. c. 25, § 5, and G.L. c. 166A, § 2, an appeal as to matters of law from any final decision, order or ruling of the Department may be taken to the Supreme Judicial Court for the County of Suffolk by an aggrieved party in interest by the filing of a written petition asking that the Order of the Department be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Department within twenty (20) days after the date of service of the decision, order or ruling of the Department, or within such further time as the Department may allow upon request filed prior to the expiration of the twenty (20) days after the date of service of said decision, order or ruling. Within ten (10) days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court for the County of Suffolk by filing a copy thereof with the Clerk of said Court. Appeals of Department Orders on basic service tier cable rates, associated equipment, or whether a franchising authority has acted consistently with the federal Cable Act may also be brought pursuant to 47 C.F.R. § 76.944.